



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2010

Ms. Leticia McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204

OR2010-14381

Dear Ms. McGowan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394243.

The Dallas Independent School District (the "district") received a request for bid responses for telephone maintenance services. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also explain that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified Calence, L.L.C. ("Calence"), Lazo Technologies, Inc. ("Lazo"), IBM, and AT&T of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

You acknowledge the district failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office with respect to the newly raised provision and submitted information. *See* Gov't Code § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.*

§ 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see also Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because third-party interests are at stake and portions of the information may be subject to sections 552.101 and 552.136,<sup>1</sup> we will address whether the submitted information is excepted from disclosure.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any correspondence from Calence, Lazo, IBM, or AT&T. Thus, these private parties have not demonstrated that they have a protected proprietary interest in any of the submitted information. See *id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). On behalf of these third parties, however, you assert that the submitted information may be excepted under section 552.110 of the Government Code. Although you assert that the submitted information is excepted under section 552.110 of the Government Code, we note that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Therefore, because we have received no arguments from the third parties, the district may not withhold any of the submitted information under section 552.110 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983). The submitted information contains business ownership percentages. We, therefore, conclude the district must withhold this personal financial

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions, such as sections 552.101 and 552.136, on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information, which we have marked, under section 552.101 in conjunction with common-law privacy.

We note that the remaining information contains insurance policy numbers. Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the district must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.<sup>2</sup>

Finally, we note that some of the remaining information at issue is protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information, but a custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). Thus, if a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the information we marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy, and (2) section 552.136 of the Government Code. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

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<sup>2</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136, without the necessity of requesting an attorney general decision.

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/em

Ref: ID# 394243

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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